

Bureau of Indian Affairs, Interior

§ 39.11

(s) *Supervisor or local school supervisor* means the individual in the position of ultimate authority at any Bureau administered or tribally operated contract school.

(t) *Tribally operated contract school or contract school* means a school (other than a public school) which is financially assisted under a contract with the Bureau.

(u) *Weighted student unit (WSU)* means the measure of student membership adjusted by the weights or ratios used as factors in the Indian School Equalization Formula established in § 39.10 below. The term weighted student unit also describes the measure by which supplements to the weighted student count at any school are augmented as the result of the application of small school supplements or Alaskan school supplements.

§ 39.3 General provisions.

(a) All funds appropriated by the Congress for the support and administration of Bureau operated or contracted elementary and secondary educational purposes and programs shall be allocated in accordance with, and be distributed through, the Indian School Equalization Program, unless a specific amount of funds are added or reduced for a particular class of schools through the budget and appropriations process.

(b) Each expenditure of funds authorized in part 39 is without exception subject to the availability of funds.

Subpart B—The Indian School Equalization Formula

§ 39.10 Establishment of the formula.

There is hereby established the Indian School Equalization Formula (ISEF). Funds for the instruction and residential care of Indian children shall be earned as an entitlement by each local school according to a weighted student unit formula. The funds allocated through the formula shall be computed as follows:

(a) The basic instructional average daily membership (ADM) shall be counted at each school location as provided for in subpart C of this part. From the application of ratios or weights as provided in these rules a

weighted student unit (WSU) value for each school location is derived by multiplying the student count for each program area by the weights.

(b) If the school is a boarding school or a dormitory, the residential students will produce program units which will, by the application of weights, produce additional WSU's.

(c) The ADM count of eligible small schools or dormitories may generate additional unit supplements.

(d) All Alaskan schools are eligible under the formula to generate supplemental units.

(e) The total weighted student unit count for each school location is then multiplied by a base unit value to derive the estimated dollar entitlement to each school(s).

The total amount is made available to each school(s), under the rules related to administrative provisions provided in subparts C and D of this part.

§ 39.11 Definitions.

Assistance to approved school(s) under this subpart is subject to the definitions established in § 39.2 and to the following definitions for determining student counts in the various weighted areas. As used in the subpart, the term:

(a) *Base or base unit* means both the weight or ratio of 1.0 and the dollar value annually established for that weight or ratio which represents students in grades 4 through 8 in a typical instructional program.

(b) *Basic program* means the instructional program provided all students at any age level exclusive of any supplemental programs which are not provided to all students in day or boarding schools.

(c) *Grade or Grade Level*, followed in most cases by *K* or a number, means a classroom grouping ordinarily determined by student age and successful completion of a criterion number of years of previous schoolwork. The use of this term does not preclude ISEP funding of programs in which instruction is *non-graded* or *individualized*, or which otherwise depart from grade-level school structure. For purposes of funding under the ISEP, students in such programs shall be counted as *in*

the grade level to which they would ordinarily be assigned based on their chronological age and number of years of schooling completed.

(d) *Grades 1–3* means a weighted program for a student who is present during the count week (see § 39.30(b)) in grades 1 through 3 who is at least 6 years old by December 31 of the fall of the school year during which the count occurs and is a member of an educational program approved by the board which is conducted at least six gross hours daily during at least 180 days per school year. Gross hours means from the start of the school day to the end of the school day including all activities.

(e) *Grades 4–8 and grades 9–12* means a weighted program for a student who is present during the count week (see § 39.30(b)) in either of the programs encompassing grades 4 through 12 who is a member of an educational program approved by the school(s) at least six gross hours daily during at least 180 days per school year and shall not have achieved the age of 21 nor have received a high school diploma or its equivalent.

(f) *Kindergarten* means a weighted program for a student who is present during the count week (see § 39.30(b)) who is at least 5 years old by December 31 of the fall of the school year during which the count occurs and a member of an educational program approved by the school(s) conducted at least four gross hours daily during at least 180 days per school year. Otherwise eligible students who are in a program conducted less than four hours daily, but at least two gross hours daily are eligible as *half-time kindergarten* students.

(g) *Intense Bilingual* means a weighted program for a student who is present during the count week, whose primary language is not English, and who is receiving academic instruction daily through oral and/or written forms of an Indian or Alaskan Native language, as well as specialized instruction in English for non native speakers of English, under resources of the ISEP.

(h) *Intensive residential guidance* means the weighted program for a resident student that needs special residential services due to one or more of

the problems identified below, and that appropriate documentation is in that student's file as follows:

(1) Presenting problem:

(i) Court of juvenile authority request for placement resulting from a pattern of infractions of the law.

(ii) Expulsion from previous school under due process.

(iii) Referral by a licensed psychologist, psychiatrist or certified psychiatric social worker as an emotionally disturbed student.

(iv) History of truancy more than 50 days in the last school year or a pattern of extreme disruptive behavior.

(2) Documentation required:

(i) Written request signed by officer of court or juvenile authority;

(ii) Certification by expelling school;

(iii) Psychologist, certified psychiatric social worker, or psychiatrist report; or

(iv) Attendance and behavior data from records of prior school, court records, or from social agency records and a written documentation summarizing such data. For all students placed in intensive residential guidance programs, there shall be further documentation of a diagnostic workup, a placement decision by a minimum of three staff members, and a record of an individualized treatment plan for each student that specifies service objectives.

(i) *Exceptional Child Program* means weighted programs for students who are receiving special education and related services, consistent with the identification, evaluation and provisions of a free appropriate public education required by part B of the Education of the Handicapped Act (20 U.S.C. 1401 *et seq.*; 45 CFR part 121a¹) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794; 45 CFR part 84) and who have the following diagnosed impairments:

(1) *Deaf* means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

¹45 CFR 121a was redesignated as 34 CFR 300 at 45 FR 77368, Nov. 21, 1980.

(2) *Hard of hearing* means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of *deaf* in this section.

(3) *Mentally retarded* means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(4) *Severely multi-handicapped* means concomitant impairments (such as mentally retarded-blind; mentally retarded-deaf) the combination of which causes such severe educational problems that they cannot be accommodated in regular educational programs or in special education programs solely for one of the impairments. The term includes deaf-blind children.

(5) *Orthopedically impaired* means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

(6) *Other health impaired* means limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes or the existence of a physical or mental impairment which substantially limits one or more major life activities, but which is not covered in paragraphs (i) (1) through (12) of this section.

(7) *Emotionally disturbed* means a condition exhibiting one or more of the following characteristics over a long period of time and to a significant degree, which adversely affects educational performance and requires small group instruction, supervision, and group counseling:

(i) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(iii) Inappropriate types of behavior or feelings under normal circumstances;

(iv) A general pervasive mood of unhappiness or depression; or

(v) A tendency to develop physical symptoms or fears associated with personal or school problems.

(8) *Specific learning disability* means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an inability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of vision, hearing, or motor handicaps, or mental retardation, or of environmental, cultural, or economic disadvantage.

(9) *Speech impaired* means a communication disorder, such as stuttering, impaired articulation, or a voice impairment, which adversely affects a child's educational performance.

(10) *Visually handicapped* means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes partially seeing, but not fully blind, children.

(11) *Severely emotionally disturbed* means a condition such as schizophrenia, autism or the presence of the following characteristics over a prolonged period of time and to a marked degree, which seriously affects educational performance and requires intensive individual therapy (which may be conducted either in or out of the school setting), individual instruction, and supervision:

(i) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(iii) Inappropriate types of behavior or feelings under normal circumstances;

(iv) A general pervasive mood of unhappiness or depression; or

(v) A tendency to develop physical symptoms or fears associated with personal or school problems.

(12) *Severely and profoundly retarded* means a degree of mental retardation (as defined in paragraph (i)(3) of this section) which severely restricts and delays major aspects of intellectual functioning so as to require intensive small group instruction and supervision.

(13) *Students requiring home/hospital based instruction* means students provided a program of instruction in a home or hospital setting because in the judgement of a physician a student cannot receive instruction in a regular public school facility without endangering the health or safety of the student or of other students.

(14) *Multihandicapped* means concomitant impairments (such as mentally retarded with a minor additional handicap such as speech impaired) the combination of which causes educational problems that can not be accommodated in regular education programs or in part-time special education programs.

(15) *Blind* means the possession of a central vision acuity of 20/200 or less in the better eye with correcting glasses or a peripheral field of vision so contracted that its widest diameter is less than 20%.

(j) *Resident* means a student officially enrolled in the residential care program of a Bureau operated or funded school and actually receiving supplemental services provided to all students who are provided room and board in a boarding school or a dormitory during those weeks when student membership counts are conducted. Such students must be members of the instructional program in the same boarding school in which they are counted as residents. To be counted as dormitory residents, students must be enrolled in and be current members of a public school in the community in which they reside.

[44 FR 61864, Oct. 26, 1979, as amended at 67 FR 52830, Aug. 13, 2002]

§ 39.12 Instructional funding.

(a) Schools are to use the following sources to fund their special Education programs:

(1) 15 percent of the Indian Student Equalization Program (ISEP) funds generated by their ADM; and

(2) Funds under Part B of the Individuals with Disabilities Education Act (IDEA), if the 15 percent of ISEP funds is inadequate to fund the services needed by all eligible ISEP students with disabilities.

(b) All ISEP special education funds must be spent before the need for Part B of IDEA funds can be demonstrated. Part B funds are designed to provide for special education needs not funded by ISEP. By demonstrating that 15 percent of the ISEP base instructional funds were spent on special education, there is support for the need for Part B funds.

(c) To receive ISEP special education funding a student must be:

(1) At least 5 years old by December 31 to be counted as a kindergarten student;

(2) At least 6 years old by December 31 to be counted as a first grade student; and

(3) Under 22 years of age and not have received a high school diploma or its equivalent on the first day of full attendance during the ISEP student count week.

(d) A school may spend ISEP funds on school-wide programs to benefit all students (including those without disabilities) only if all of the following conditions are met:

(1) The school sets aside 15 percent of the basic instructional allotment to meet the needs of students with disabilities;

(2) The school can document that it has met all needs of students with disabilities and addressed all components of IDEA; and

(3) There are unspent funds after the conditions in paragraphs (d)(1) and (d)(2) of this section are met.

(e) Public Law 100-297 establishes a weighted unit for each ISEP-eligible full-time student that is gifted and talented. The weighted unit for gifted and talented is 2.0 weighted student units minus the basic instructional program weight by grade level. The weights for